Senate

General Assembly

File No. 348

January Session, 2007

Substitute Senate Bill No. 1096

Senate, April 5, 2007

The Committee on Public Health reported through SEN. HANDLEY of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ESTABLISHMENT OF THE FATALITY REVIEW BOARD FOR PERSONS WITH DISABILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) (a) There is established a Fatality Review Board for Persons with Disabilities. The fatality review board shall investigate the circumstances surrounding the untimely deaths of persons with disabilities, that, in the opinion of the director of the Office of Protection and Advocacy for Persons with Disabilities warrant a full and independent investigation. The fatality review board shall investigate the untimely deaths of clients of the Department of Mental Retardation in accordance with subsection (b) of section 17a-210 of the general statutes, as amended by this act. In addition, the fatality review board may investigate the circumstances surrounding deaths as described in subsection (b) of section 46a-11c of the general statutes. In order to facilitate a prompt investigation of the circumstances surrounding the untimely death of a client under the care of the Department of Mental Retardation, said director may refer a

particular case to the fatality review board prior to the completion of a review conducted by the Independent Mortality Review Board pursuant to the provisions of section 17a-210 of the general statutes, as amended by this act.

(b) The Fatality Review Board for Persons with Disabilities shall consist of the following six members: The director of the Office of Protection and Advocacy for Persons with Disabilities, the Chief State's Attorney or his designee and four members appointed by the Governor, one of whom shall be a law enforcement professional with a background in forensic investigations, one of whom shall be a mental retardation professional and two of whom shall be medical professionals. The Commissioner of Mental Retardation or the commissioner's designee shall serve as a nonvoting liaison to the fatality review board. The director of the Office of Protection and Advocacy for Persons with Disabilities shall serve as chairperson of the fatality review board and may assign agency staff and hire consultants with expertise as necessary to assist the board in the completion of its investigation.

(c) In accordance with section 46a-13a of the general statutes, all relevant state, local or private agencies shall cooperate and assist the fatality review board in the performance of its statutory duties.

(d) On or before February 1, 2008, and annually thereafter, the fatality review board shall report, in accordance with section 11-4a of the general statutes, on its investigations to the Governor, and to the joint standing committees of the General Assembly having cognizance of matters relating to human services and public health.

Sec. 2. Section 17a-210 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be a Department of Mental Retardation. The Department of Mental Retardation, with the advice of a Council on Mental Retardation, shall be responsible for the planning, development and administration of complete, comprehensive and

integrated state-wide services for persons with mental retardation and persons medically diagnosed as having Prader-Willi syndrome. The Department of Mental Retardation shall be under the supervision of a Commissioner of Mental Retardation, who shall be appointed by the Governor in accordance with the provisions of sections 4-5 to 4-8, inclusive. The Council on Mental Retardation may advise the Governor on the appointment. The commissioner shall be a person who has background, training, education or experience in administering programs for the care, training, education, treatment and custody of persons with mental retardation. The commissioner shall be responsible, with the advice of the council, for: (1) Planning and developing complete, comprehensive and integrated state-wide services for persons with mental retardation; (2) the implementation and where appropriate the funding of such services; and (3) the coordination of the efforts of the Department of Mental Retardation with those of other state departments and agencies, municipal governments and private agencies concerned with and providing services for persons with mental retardation. The commissioner shall be responsible for the administration and operation of the state training school, state mental retardation regions and all state-operated community-based residential facilities established for the diagnosis, care and training of persons with mental retardation. The commissioner shall be responsible for establishing standards, providing technical assistance and exercising the requisite supervision of all state-supported residential, day and program support services for persons with mental retardation and work activity programs operated pursuant to section 17a-226. **[**The commissioner shall conduct or monitor investigations into allegations of abuse and neglect and file reports as requested by state agencies having statutory responsibility for the conduct and oversight of such investigations. In the event of the death of a person with mental retardation for whom the department has direct or oversight responsibility for medical care, the commissioner shall ensure that a comprehensive and timely review of the events, overall care, quality of life issues and medical care preceding such death is conducted by the department and shall, as

requested, provide information and assistance to the Independent Mortality Review Board established by Executive Order No. 25 of Governor John G. Rowland. The commissioner shall report to the board and the board shall review any death: (A) Involving an allegation of abuse or neglect; (B) for which the Office of Chief Medical Examiner or local medical examiner has accepted jurisdiction; (C) in which an autopsy was performed; (D) which was sudden and unexpected; or (E) in which the commissioner's review raises questions about the appropriateness of care.**]** The commissioner shall stimulate research by public and private agencies, institutions of higher learning and hospitals, in the interest of the elimination and amelioration of retardation and care and training of persons with mental retardation.

(b) The commissioner shall conduct or monitor investigations into allegations of abuse and neglect and file reports as requested by state agencies having statutory responsibility for the conduct and oversight of such investigations. In the event of the death of a person with mental retardation for whom the department has direct or oversight responsibility for medical care, the commissioner shall: (1) Report such death to the Office of Protection and Advocacy for Persons with Disabilities not later than seventy-two hours after the death, and (2) ensure that a comprehensive and timely review of the events, overall care, quality of life issues and medical care preceding such death is conducted by the department and shall, as requested, provide information and assistance to the Independent Mortality Review Board established by Executive Order No. 25 of Governor John G. Rowland and on and after the effective date of this section, to the Fatality Review Board for Persons with Disabilities, established pursuant to section 1 of this act. The commissioner shall report to such fatality review board and such board shall review any death: (A) Involving an allegation of abuse or neglect; (B) for which the Office of Chief Medical Examiner or local medical examiner has accepted jurisdiction; (C) in which an autopsy was performed; (D) which was sudden and unexpected; or (E) in which the commissioner's review raises questions about the appropriateness of care.

[(b)**]** (c) The commissioner shall be responsible for the development of criteria as to the eligibility of any person with mental retardation for residential care in any public or state-supported private institution and, after considering the recommendation of a properly designated diagnostic agency, may assign such person to a public or state-supported private institution. The commissioner may transfer such persons from one such institution to another when necessary and desirable for their welfare, provided such person and such person's parent, conservator, guardian or other legal representative receive written notice of their right to object to such transfer at least ten days prior to the proposed transfer of such person from any such institution or facility. Such prior notice shall not be required when transfers are made between residential units within the training school or a state mental retardation region or when necessary to avoid a serious and immediate threat to the life or physical or mental health of such person or others residing in such institution or facility. The notice required by this subsection shall notify the recipient of his or her right to object to such transfer, except in the case of an emergency transfer as provided in this subsection, and shall include the name, address and telephone number of the Office of Protection and Advocacy for Persons with Disabilities. In the event of an emergency transfer, the notice required by this subsection shall notify the recipient of his or her right to request a hearing in accordance with subsection **[**(c)**]** (d) of this section and shall be given within ten days following the emergency transfer. In the event of an objection to the proposed transfer, the commissioner shall conduct a hearing in accordance with subsection **[**(c)**]** (d) of this section and the transfer shall be stayed pending final disposition of the hearing, provided no such hearing shall be required if the commissioner withdraws such proposed transfer.

[(c)**]** (d) Any person with mental retardation who is eighteen years of age or older and who resides at any institution or facility operated by the Department of Mental Retardation, or the parent, guardian, conservator or other legal representative of any person with mental retardation who resides at any such institution or facility, may object to any transfer of such person from one institution or facility to another

for any reason other than a medical reason or an emergency, or may request such a transfer. In the event of any such objection or request, the commissioner shall conduct a hearing on such proposed transfer, provided no such hearing shall be required if the commissioner withdraws such proposed transfer. In any such transfer hearing, the proponent of a transfer shall have the burden of showing, by clear and convincing evidence, that the proposed transfer is in the best interest of the resident being considered for transfer and that the facility and programs to which transfer is proposed (1) are safe and effectively supervised and monitored, and (2) provide a greater opportunity for personal development than the resident's present setting. Such hearing shall be conducted in accordance with the provisions of chapter 54.

[(d)**]** (e) Any person, or the parent, guardian, conservator or other legal representative of such person, may request a hearing for any final determination by the department that denies such person eligibility for programs and services of the department. A request for a hearing shall be made in writing to the commissioner. Such hearing shall be conducted in accordance with the provisions of chapter 54.

[(e)**]** (f) Any person with mental retardation, or the parent, guardian, conservator or other legal representative of such person, may request a hearing to contest the priority assignment made by the department for persons seeking residential placement, residential services or residential support. A request for hearing shall be made, in writing, to the commissioner. Such hearing shall be conducted in accordance with the provisions of chapter 54.

[(f)**]** (g) Any person with mental retardation or the parent, guardian, conservator or other legal representative of such person, may object to (1) a proposed approval by the department of a program for such person that includes the use of behavior-modifying medications or aversive procedures, or (2) a proposed determination of the department that community placement is inappropriate for such person placed under the direction of the commissioner. The department shall provide written notice of any such proposed

approval or determination to the person, or to the parent, guardian, conservator or other legal representative of such person, at least ten days prior to making such approval or determination. In the event of an objection to such proposed approval or determination, the commissioner shall conduct a hearing in accordance with the provisions of chapter 54, provided no such hearing shall be required if the commissioner withdraws such proposed approval or determination.

Sec. 3. Subsection (l) of section 17a-274 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(l) In the event that any person placed under the provisions of this section is recommended for transfer by the Department of Mental Retardation, the department shall proceed as required by subsection **[**(c)**]** (d) of section 17a-210, as amended by this act, and shall in addition notify the probate court which made the placement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	New section
Sec. 2	*from passage*	17a-210
Sec. 3	*from passage*	17a-274(l)

HS *Joint Favorable C/R* PH

PH *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 $	FY 09 $
Department of Mental Retardation; and Office of Protection & Advocacy for Persons with Disabilities	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill codifies the Fatality Review Board for Persons with Disabilities, as established in Executive Order #25 (February 2002) and the reporting of deaths of people under the Department of Mental Retardation's care to the Office of Protection and Advocacy for Persons with Disabilities. The bill implements current practice and will not result in any fiscal impact.

The Out Years

There is no fiscal impact in the out years.

OLR Bill Analysis

SB 1096

AN ACT CONCERNING THE ESTABLISHMENT OF THE FATALITY REVIEW BOARD FOR PERSONS WITH DISABILITIES.

SUMMARY:

This bill codifies, with changes, the Fatality Review Board (FRB) for Persons with Disabilities, which was created by Executive Order 25 in February 2002. The six-member board must investigate the circumstances surrounding untimely deaths of people with disabilities when the director of the Office of Protection and Advocacy for Persons with Disabilities (OPA) determines it is necessary, and all untimely deaths of people under the Department of Mental Retardation's (DMR) care.

The FRB must report on its investigations by February 1, 2008, and annually thereafter, to the governor and the Human Services and Public Health committees. Executive Order 25 requires annual reports to the governor and the Public Health Committee (see BACKGROUND).

EFFECTIVE DATE: Upon passage

FATALITY REVIEW BOARD (FRB)

Membership

The bill constitutes the FRB with the following six members: (1) the OPA director; (2) the chief state's attorney, or his designee; and (3) four members the governor appoints, one law enforcement professional with a forensic investigations background, one mental retardation professional, and two medical professionals.

The DMR commissioner or his designee serves as a nonvoting

liaison to the FRB. The OPA director chairs the FRB and can assign agency staff and hire experts to help the board investigate.

Executive Order 25 already requires this composition and respective roles for agency heads.

Authority and Mandate to Investigate When Abuse or Neglect Suspected

In addition to its mandate to review referrals from OPA, the bill allows the FRB to investigate deaths of people for whom DMR has direct oversight responsibility for medical care and whose deaths DMR believed were caused by abuse or neglect.

Current law requires the DMR commissioner to notify OPA within 24 hours after these deaths occur, and OPA generally must investigate to determine whether abuse or neglect occurred. Its investigations follow protocols it establishes in consultation with the DMR commissioner.

DMR Mandate to Report Certain Deaths

The bill requires DMR, whenever someone for whom it has direct or oversight responsibility for medical care dies, to report the death within 72 hours to OPA, regardless of whether abuse or neglect is suspected. Executive Order 25 directs DMR to make these reports but imposes no time requirement.

By law, DMR must conduct its own investigations when such deaths occur and provide information and assistance to the Independent Mortality Review Board (IMRB). The bill requires DMR to also furnish this to the FRB.

Referrals to FRB Before Independent Mortality Review Board Completes Investigation

To facilitate prompt investigations of untimely deaths of DMR clients, the bill allows the OPA director to refer cases to the FRB before the IMRB, also established in Executive Order 25 (see BACKGROUND), finishes its review of medical care and other

circumstances surrounding DMR client deaths. This authority already exists in the executive order.

The IMRB investigates deaths when either the DMR commissioner or OPA director believes the deaths were caused by abuse and neglect or when it determines that a thorough review of the care quality and other circumstances surrounding the death is warranted.

The IMRB has not been codified but part of its charge has.

Obligation to Assist With Investigations

The bill requires all relevant state, local, or private agencies to cooperate and assist the FRB in performing its duties, in accordance with the law that requires them to cooperate with OPA in its investigations, including releasing client records with the client's consent.

By law, DMR must provide information and assistance to the IMRB, when asked. The bill requires DMR to do this for the FRB.

BACKGROUND

Executive Order 25

In February 2002, Governor Rowland issued Executive Order No. 25, largely in response to a number of untimely deaths of DMR clients living in community living arrangements. The order required DMR to report to OPA all deaths of persons it placed or treated under the commissioner's direction, regardless of whether abuse or neglect was suspected.

It also established an Independent Mortality Review Board to review the medical care and other circumstances surrounding these deaths when either the DMR commissioner or OPA director believed the deaths were caused by abuse or neglect, or the board otherwise believes it is warranted.

Finally, it created a Fatality Review Board for Persons with Disabilities to investigate deaths that, in the OPA director's opinion,

warranted a full and independent investigation, which could include individuals with other disabilities besides mental retardation.

PA 03-146, the result of a Legislative Program Review and Investigations Committee study, built on the executive order, creating additional requirements for the DMR commissioner when people for whom DMR had direct or oversight responsibility for medical care died. It also directed the OPA director, when allegations were made that the deaths could have been due to abuse or neglect, to determine whether the abuse or neglect occurred, unless a court ordered otherwise.

PA 04-12 (1) established a 24-hour deadline for the DMR commissioner to report to OPA deaths of anyone placed or treated under his direction and (2) shortened from five calendar days to 72 hours the time within which mandated reporters of suspected abuse or neglect of persons with mental retardations had to report to OPA.

Effect of Statutes on Executive Orders

In 1986, the attorney general issued a formal opinion in response to a series of questions about executive orders. One question was whether the legislature could amend or repeal an executive order. In his response, Attorney General Lieberman wrote that an act that the legislature passed that explicitly referred to the executive order and stated that it modified that order would alter it. He added that even if the executive order was not specifically cited, a "more recent and more specific legislative enactment dealing with the same subject matter would take precedence over an earlier executive order."

COMMITTEE ACTION

Human Services Committee

Joint Favorable Change of Reference
Yea 14 Nay 5 (03/01/2007)

Public Health Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/19/2007)